IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Gates v. Sahota,*
2017 BCSC 485

Date: 20170327
Docket: S167841
Registry: Vancouver

Between:

Jerald Jack Gates

Plaintiff

And

Parkash Sahota, Pal Sahota, Gurdyal Sahota, Kirin Sahota, Triville Enterprises Ltd., Yang-Myung Hotel Management Ltd., Sahotacorp, and City of Vancouver

Defendants

Before: The Honourable Madam Justice H. MacNaughton

Supplementary Reasons for Judgment

Counsel for the Plaintiff:	J. Gratl
Counsel for the Defendants, Parkash Sahota, Pal Sahota, Gurdyal Sahota, Kirin Sahota, Triville Enterprises Ltd., Yang-Myung Hotel Management Ltd., and Sahotacorp:	G. Fraser M. Katzalay
Counsel for the City of Vancouver:	G. Murray
Place and Date of Trial/Hearing:	Vancouver, B.C. January 6, 2017
Place and Date of Judgment:	Vancouver, B.C. March 27, 2017

Background

[1] On January 13, 2017, I delivered oral reasons granting Jerald Gates leave to bring this claim in the British Columbia Supreme Court (the "BCSC") pursuant to s. 58(2)(c) of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*RTA*]. My oral reasons were subsequently released as *Gates v. Sahota*, 2017 BCSC 193 (the "jurisdiction decision").

[2] I concluded that the BCSC had jurisdiction because the claims against the Sahota Defendants, as I defined those defendants in the jurisdiction decision, were substantially linked to the claims Mr. Gates made against the City of Vancouver (the "City").

[3] As I had found jurisdiction under s. 58(2)(c), I did not go on to consider the parties' arguments about whether the BCSC also had jurisdiction under s. 58(2)(a) of the *RTA* because the claim was for more than $25,000.

[4] The Sahota Defendants applied for leave to appeal the jurisdiction decision. They also applied to me for a stay of the BCSC proceedings pending the outcome of the appeal.

[5] The stay application was argued before me on February 20, 2017, and on March 2, 2017, I gave oral reasons granting the stay on conditions. I determined that if leave to appeal was granted, the proceedings should be stayed until a determination of an appeal on the merits. In particular, I held:

> … if leave to appeal is denied, any stay I now grant becomes moot. However, I have concluded that, in all the circumstances of this case, if leave to appeal is granted, these proceedings should be stayed until a determination of an appeal on the merits.

[6] The leave application was argued before Justice Smith in the B.C. Court of Appeal on March 9, 2017. It was adjourned with a direction that I deliver supplementary reasons considering Mr. Gates' application under s. 58(2)(a) of the *RTA.* These are those reasons. I have not repeated the factual background in these reasons.

[7] The jurisdiction decision and the parties did not consider the possibility of an adjournment of the leave to appeal application. After receipt of correspondence from both counsel, I advised them that, in light of my reasons for the stay, it was implicit that the stay was in place until a decision on the leave to appeal was made.

The Applicable *RTA* Provisions

[8] Section 84.1 of the *RTA* gives the director exclusive jurisdiction to inquire into, hear, and determine factual, legal, and discretionary matters in a dispute resolution proceeding arising from a residential landlord-tenant relationship.

[9] As set out in the jurisdiction decision, s. 58 of the *RTA* contains a privative clause which provides that the BCSC only has jurisdiction over residential tenancy matters where the amount in dispute exceeds the monetary jurisdiction of the Small Claims Court, currently $25,000, or where the dispute is linked substantially to a matter before the BCSC. All other residential tenancy matters are to be resolved before the Residential Tenancy Branch (the "RTB").

[10] In particular, s. 58 provides:

> 58 (1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:
>
> (a) rights, obligations and prohibitions under this Act;
>
> (b) rights and obligations under the terms of a tenancy agreement that
>
> (i) are required or prohibited under this Act, or
>
> (ii) relate to
>
> (A) the tenant's use, occupation or maintenance of the rental unit, or
>
> (B) the use of common areas or services or facilities.
>
> (2) Except as provided in subsection (4), if the director accepts an application under subsection (1), the director must resolve the dispute under this Part unless
>
> (a) the claim is for an amount that is more than the monetary limit for claims under the *Small Claims Act*,
>
> (a.1) the claim is with respect to whether the tenant is eligible to end a fixed term tenancy under section 45.1 *[tenant's notice: family violence or long-term care]*,

> (b) the application was not made within the applicable period specified under this Act, or
>
> (c) the dispute is linked substantially to a matter that is before the Supreme Court.
>
> …
>
> (3) Except as provided in subsection (4), a court does not have and must not exercise any jurisdiction in respect of a matter that must be submitted to the director for dispute resolution under this Act.
>
> (4) The Supreme Court may
>
> (a) on application, hear a dispute referred to in subsection (2) (a) or (c), and
>
> (b) on hearing the dispute, make any order that the director may make under this Act.
>
> [Emphasis added.]

[11] As I said in the jurisdiction decision, s. 58 had not previously been directly considered in any BCSC decision. It was indirectly considered in two decisions I summarized therein. Neither specifically addressed s. 58(2)(a).

The Parties' Positions

[12] With respect to s. 58(2)(a), Mr. Gates submits that the facts of this case place the matter within the jurisdiction of the Court because (1) the cost of the repairs to the Regent, which the action seeks to compel, will exceed $25,000; and (2) the total compensation sought and the punitive damages claimed, on behalf of all the members of the class, exceed $25,000.

[13] In response, the Sahota Defendants submit that there are no facts pleaded in Mr. Gates' notice of civil claim which support that the quantum of damages sought could possibly exceed $25,000 for him or any other single tenant of the Regent.

[14] In particular, the Sahota Defendants rely on the fact that on April 1, 2016, the RTB rendered a decision with respect to a dispute between Mr. Gates and some of the Sahota Defendants. After finding that Triville Enterprises Ltd. ("Triville") and Pal Sahota had breached the *RTA* by failing to provide Mr. Gates with heat and hot water, the RTB awarded Mr. Gates damages which were less than $25,000. For the lack of heat in Mr. Gates' unit, the RTB ordered a rent reduction of $75 a month

between September 1, 2014 and March 30, 2016 and, for the periodic lack of hot water between September 1, 2014, and January 8, 2015, the RTB ordered total compensation of $250. Finally, the RTB did not award any damages for its finding that Mr. Gates, and others, had been intimidated by the Regent's manager, causing them to refrain from insisting that repairs be made.

[15] Overall, the Sahota Defendants submit that the quantum of these awards suggests that Mr. Gates' BCSC claim could not possibly exceed $25,000 and that no other tenant is likely to have damages exceeding $25,000.

[16] Further the Sahota Defendants submit that Mr. Gates' claim for the cost of the repairs to the Regent's façade, boilers, fire escape, roof, and elevator, and the cost of solving the rodent problem he alleges are not amounts which can be claimed by Mr. Gates or any proposed class member, as personal monetary damages and should not be considered when determining whether Mr. Gates, or any other potential class member's claim, exceeds $25,000.

Conclusion

[17] Considering this application under s. 58(2)(a), and for the reasons which follow, I am satisfied that the claims against the Sahota Defendants, taken either individually for each class member, or as a whole, are likely to exceed $25,000 and that, as a result, the BCSC also has jurisdiction over this proceeding under s. 58(2)(a).

Analysis

[18] First, the context of Mr. Gates' notice of civil claim is important to the analysis under s. 58(2)(a). He brings his action as an intended class or representative action and has endorsed the notice of civil claim accordingly.

[19] Pursuant to ss. 1 and 3 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 [*CPA*], class proceedings may only be brought in the BCSC. There is no requirement in the *CPA* that the damages sought on behalf of the members of the class exceed the Small Claims Court limit.

[20] Class proceedings are intended for a particular policy or purpose, as explained in *Hollick v. Toronto (City)*, 2011 SCC 68 at para. 15. That is to facilitate:

> a) access to justice for claimants of relatively small amounts of money, making economical the prosecution of claims that any one class member would find too costly to prosecute;
>
> b) judicial economy by avoiding unnecessary duplication in fact finding and legal analysis; and
>
> c) efficiency and justice by ensuring that actual and potential wrongdoers modify their behaviour, take full account of the harm they are causing or might cause to the public.

[21] Even though, in this case, the certification application has not been heard or decided, the claim must be considered in the context of the intent to have it certified. As Justice Saunders wrote at para. 33 of *MacKinnon v. Instaloans Financial Solution Centres (Kelowna) Ltd.*, 2004 BCCA 472:

> It is true that in one sense the action, before certification, is an ordinary action … it is also clear that an action commenced under the *Class Proceedings Act* is, even before the certification application, more than just "any old action": it is an action with ambition. …

[22] In this case, that "ambition" is to obtain both damages for each member of the proposed class and injunctive relief or orders compelling specific actions intended to benefit them all.

[23] While s. 73(1) of the *RTA* permits the director of the RTB to hear two or more applications in respect of related disputes with the same landlord at the same time, that provision does not grant the director the power to award the types of damages claimed in this action.

[24] In particular, and as a second basis for my conclusion with respect to the BCSC's jurisdiction, among the claims for relief sought in Mr. Gates' notice of civil claim are general, special, aggravated, and punitive damages on behalf of the class against all of the defendants.

[25] It also seeks injunctive relief. Specifically, it seeks the following injunctive relief: requiring the City to carry out work to remediate the health and safety issues

at the Regent Hotel (the "Regent") at the Sahota Defendants' expense; or, alternatively, injunctive relief requiring the Sahota Defendants to do so; injunctive relief as against the Sahota Defendants from having direct or indirect contact with the tenants of the Regent and requiring the Sahota Defendants to keep the peace and be of good behaviour for the duration of the repairs to the Regent ; and an injunction preventing the Sahota Defendants from evicting any of the tenants while the health and safety issues at the Regent are remediated.

[26] These claims for injunctive relief are not available from the RTB.

[27] The notice of civil claim also seeks an order appointing a property management company, with experience in building remediation, in the place of the Sahota Defendants, to operate the Regent and facilitate the repairs by the City. This relief is not available from the RTB.

[28] Further, while s. 67 of the *RTA* grants the RTB jurisdiction to order compensation for damage or loss suffered by a tenant, in this case, some of the heads of damage claimed are "punitive", not compensatory.

[29] In my view, although s. 58 of the *RTA* does not specifically enumerate these first two factors as exceptions to the jurisdiction of the RTB, in the circumstances of this intended class proceeding, they form part of the context for this application.

[30] Third, I have concluded that, when considered as a whole, Mr. Gates' claim for damages is likely to exceed $25,000.

[31] At paras. 6-8 of Mr. Gates' first affidavit, affirmed on October 27, 2016 (the "First Affidavit"), he explains his commencement of a dispute at the RTB in respect of the lack of heat and hot water in his unit, which he said had not been available since September 2014, the date he moved into his unit. A reply to his request for dispute resolution was filed by Triville and Pal Sahota.

[32] A hearing was held by the RTB on February 1 and March 30, 2016. The RTB released an interim decision on February 5, 2016, and a final decision on April 1,

2016. In the final decision, after reviewing the evidence in respect of the lack of heat in Mr. Gates' unit, the adjudicator concluded at p. 14 of the reasons:

> … the absence of heat in the rental unit reduced the value of this tenancy by $75.00 per month for the period between September 01, 2014 and March 30, 2016, which is 19 months. I therefore find that the Tenant is entitled to compensation of $1,425.00 for these 19 months.

[33] In respect of the lack of hot water in Mr. Gates' unit, the adjudicator concluded at p. 16 of the reasons:

> … the Tenant was periodically without hot water … between September 01, 2014 and January 08, 2015.
>
> … the periodic absence of hot water reduced the value of this tenancy by $50.00 per month for the period between September 01, 2014 and January 08, 2015, which is 5 months. I therefore find that the Tenant is entitled to compensation of [$250.00] for these 5 months.
>
> [Emphasis in original.]

[34] In respect of Mr. Gates' claim that the sink in his unit leaked, the adjudicator concluded at p. 17 of the reasons:

> … the Tenant has submitted insufficient evidence to establish that the sink in his rental unit leaked from the start of the tenancy until two months prior to the hearing on March 30, 2016 …
>
> …
>
> As the Tenant cannot clearly establish when the leaking sink was reported to the Landlord and there is no evidence to refute the Agent for the Landlord's testimony that the sink was repaired shortly after it was reported to the Landlord, I find that the Tenant is not entitled to compensation for the leaking sink.

[35] In respect of Mr. Gates' claim that he, and other occupants of the Regent, felt intimidated by the Regent's manager and were discouraged for insisting on repairs, the adjudicator concluded at p. 18 of the reasons:

> … I find that Tenant and other occupants of the residential complex felt intimidated by Manager M and, as a result, were discouraged from insisting that repairs be made. I therefore find it reasonable that the Tenant stopped reporting problems to the front desk and eventually reported deficiencies directly to the City.

[36] Without explanation, the adjudicator did not award any damages for the intimidation Mr. Gates and others felt as a result of these actions.

[37] In addition to the compensation ordered in favour of Mr. Gates, the adjudicator also made orders under s. 62(3) of the *RTA* to give effect to the rights, obligations, and prohibitions under it. In particular, the adjudicator ordered at page 19 of the reasons:

> … **I Order the Landlord to repair the radiator in the Tenant's rental unit and to take all steps necessary to ensure the radiator is functioning properly and that adequate heat is being provided to the rental unit. I further Order that this repair be completed by April 30, 2015.**
>
> In compensation for the reduced value of this tenancy as a result of the malfunctioning radiator, I hereby authorize the Tenant to reduce each monthly rent payment by $75.00, commencing April 01, 2016. I authorize the Tenant to reduce each subsequent monthly rent payment by $75.00 until such time as the Landlord serves the Tenant with confirmation, from a qualified service technician, that the radiator is functioning properly.
>
> As I am unable to determine whether the Tenant currently has hot water in his rental unit … **I Order the Landlord to have the temperature of the water in the Tenant's rental unit tested by a qualified professional to ensure it meets local building standards. I further Order that his repair be completed by April 30, 2015.**
>
> In the event that the Landlord has not provided the Tenant with evidence from a qualified professional that the hot water in his rental unit meets local building standards by April 30, 2015, I authorize the Tenant to reduce each monthly rent payment by $50.00, effective May 01, 2016. I authorize the Tenant to reduce each subsequent monthly rent payment by $50.00 until such time as the Landlord [does so].
>
> [Emphasis in original.]

[38] As of the date of the First Affidavit, Mr. Gates says that Triville and Pal Sahota had not complied with the RTB order. At para. 11, he says that his heat still did not work and his radiator had not been replaced or properly repaired. As a result, he continued to reduce the monthly rent for his unit by $75 a month. In para. 12, he says that his hot water did not work adequately and he continued to reduce the monthly rent by $50 a month. Finally, as of October 27, 2016, Triville and Pal Sahota had not had the temperature in his unit tested by a qualified professional to ensure it meets local building standards.

[39] In para. 15 of his affidavit, Mr. Gates says that he was required to commence a small claims court action to collect the award made by the RTB adjudicator.

[40] These failures to comply with the RTB orders, and to pay damages to Mr. Gates, form part of the basis of Mr. Gates' claim in this action for special, aggravated, or punitive damages.

[41] Also, as it relates to the issues in this action and the claim for special, aggravated, or punitive damages, it is of note that Triville and Pal Sahota made representations to the RTB about the state of repairs at the Regent. In their January 19, 2016 reply to Mr. Gates' filing at the RTB, they stated that:

> viii. Since December 22, 2015 the heat to the building has been interrupted intermittently and the Landlord has received two bids to replace the existing boiler system; vents and electrical components. A third bid from Latham's Commercial Heating and air conditioning is expected before February 1, 2016. …
>
> ix. The Regent Hotel is 105 years old; the replacement boiler once ordered will have to be dismantled and brought in pieces through a narrow elevator shaft then reconstructed in place. The current boiler was installed in 2000 and has been regularly (seasonally) maintained over the years and has now become obsolete or near the end of [its] expected life span. It may take up to three weeks to perform all of the work necessary to replace the existing boiler. The reason for the delay is due to disassembling the entire old boiler in place, then removing it and then again dis-assembly of the new one, traversed through the elevator shaft and welded back together again.

[42] The quote from Johnstone Boiler was $118,192, before taxes.

[43] Apparently at the hearing, as reported at p. 3-4 of the RTB adjudicator's decision, the Agent for the Landlord submitted that:

- the Landlord had now lost confidence in the boiler and intended to replace it in the very near future;
- the Landlord had obtained quotes for replacing the boiler;
- it would take approximately one week to replace the boiler so the Landlord had delayed the replacement until the weather improved; and

- he presumed any faulty radiators would be replaced when the boiler was replaced.

[Emphasis added.]

[44] As of the date of the First Affidavit, nine months after Triville and Pal Sahota filed their Reply with the RTB, and seven months after the submissions set out in the paragraph above, the replacement boiler had not been installed.

[45] In fact, in a January 5, 2017 affidavit affirmed by Bilesh Liyanage, Triville's Comptroller, filed in response to this application, he indicated that the boiler work which was, on January 19, 2016, only expected to take a week, had still not been completed. He attached a revised January 20, 2016 quote for replacement of the Regent's boilers and indicated, at para. 5, that work began on installation of two new boilers in late August 2016 but was delayed. The first boiler was functional in late November 2016. He did not give a date for "energizing" the second boiler. He acknowledged problems with a "small number of radiators" which Triville was in the process of repairing.

[46] The failure to comply with the deadlines set in the RTB order, and this record of changing the date of the proposed repairs to the boilers which Mr. Gates submits is a part of a pattern of behaviour engaged in by the Sahota Defendants, also forms part of Mr. Gates' factual basis for claiming special, aggravated, and punitive damages from the Sahota Defendants.

[47] Finally, as it relates to this third basis, awards made at the RTB do not govern the quantum of damages which are available in the BCSC, and the deficiencies considered by the RTB were confined to Mr. Gates' unit and, in any event, did not extend to all of the deficiencies alleged in this action. I am therefore satisfied that, if Mr. Gates is successful in establishing his allegations at trial, he may well be entitled to personal damages, under some or all of the various heads of damage claimed, exceeding $25,000.

[48] I conclude that, taken as a whole, the damages claimed in this intended class proceeding exceed $25,000. In particular, with respect to the repairs to the façade

that Mr. Gates seeks to compel by way of the injunctive relief sought in this action, the repair quote from Spratt Emanuel Engineering ("Spratt") was $420,000. With respect to the repairs of the fire escape that Mr. Gates also seeks to compel, a fixed fee quote was obtained from Spratt in the amount of $302,765.

[49] Attached to Mr. Liyanage's affidavit is a January 2017 email from a representative of Spratt to counsel for the Sahota Defendants which indicated that work on the fire escape had not then been commenced. An "optimistic" start of installation was projected for the first week of February, pending fabrication of the fire escape, scheduling, and the necessary permits.

[50] The façade, fire escape, roof, and elevator repairs, and the alleged rodent problems at the Regent did not form part of Mr. Gates' application for dispute resolution at the RTB and thus were not the subject of the compensation award.

[51] While I accept that these amounts will not form part of a *damage or compensation* award to Mr. Gates, or any other individual potential class member, the terms of s. 58(2)(a) do not limit the assessment of the amount of the claim to damage claims. In my view, it extends to considering the amounts claimed as a whole.

[52] Lastly, the evidence discloses that there are over 150 units in the Regent. As set out in para. 26 of the First Affidavit Mr. Gates' claim is for:

> … at least $200.00 per suite per month that the Regent has been in disrepair and in breach of the [City of Vancouver's] Standards of Maintenance Bylaw. With 153 suites, this would amount to $367,200.00 for each year in which the Regent was in disrepair. There is also a claim for punitive damages of at least $200 per suite per month for the period the Regent has been in breach of [the bylaw].

[53] On this evidence, I am also satisfied that the claim is for an amount exceeding $25,000.

"MacNaughton J."